

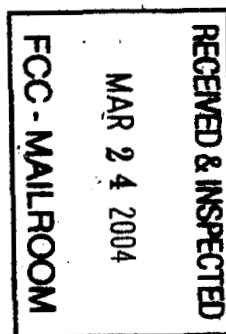
CYC203



Federal Communications Commission
Washington, D.C. 20554

March 18, 2004

Wray Fitch, III, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807



Dear Mr. Fitch:

This is in response to your request to dismiss the Petition for Reconsideration you filed on behalf of Mountain States Radio, Inc. ("MSR"), on June 24, 2002. The petition was filed as a result of action taken by letter dismissing your petition for rule making which requested the substitution of Channel 280A for Channel 285A at Cheyenne, Wyoming. To accommodate the channel substitution, you also requested the substitution of Channel 285C2 for vacant Channel 280C2 at Cheyenne, Wyoming.

Pursuant to Section 1.420(j) of the Commission's Rules you state that MSR received no consideration for the requested dismissal. Per your request, we hereby dismiss your Petition for Reconsideration.

Accordingly, we are returning your Petition for Reconsideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "John A. Karousos".

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Enclosures

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED

JUN 24 2002

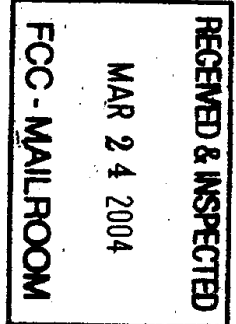
In the Matter of

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Cheyenne, Wyoming)**

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RM-_____

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



TO: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Mountain States Radio, Inc. ("MSR") files this Petition for Reconsideration pursuant to Rule 1.106 of the Commission's Letter Action dated May 23, 2002 dismissing the Petition for Rulemaking filed by MSR on February 22, 2002. MSR believes the Commission erred in dismissing the MSR Petition for Rulemaking.

MSR, the licensee of KZCY(FM), Channel 285A, licensed to Cheyenne, Wyoming, requested the substitution of Channel 280A for Channel 285A at Cheyenne, Wyoming. To accommodate the upgrade, MSR also requested the substitution of Channel 285C2 for vacant but unapplied for Channel 280C2 at Cheyenne, Wyoming. The Commission dismissed the rulemaking for MSR's failure to demonstrate, as required for a nonadjacent upgrade, to either: (1) demonstrate the availability of an additional equivalent class channel for other expressions of interest; or (2) to demonstrate, pursuant to Section 1.420(g)(3) that the proposal would constitute an incompatible channel swap.

MSR respectfully requests that the Commission reconsider its dismissal. In the event there is no expression of interest by another party for Channel 280C1, other than by MSR, there would be no need for an equivalent channel, and the public interest would clearly be benefitted by the improved service offered by Channel 280C1. It is true that in the event there is another expression of interest for Channel 280C1, MSR has no intention of placing its authorization in jeopardy and subject to other

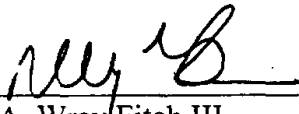
applicants. MSR believes that Commission precedent allows a petitioner the option to withdraw its rulemaking proposal in the event there is another expression of interest which would in any way jeopardize its authorization. *Modification of FM and TV Licenses*, 98 FCC 2d 916 at ¶9 (1984).

MSR, therefore, requests that the Commission institute a notice of proposed rulemaking with the express proviso that in the event there is a competing expression of interest that MSR shall have the right to withdraw and dismiss the rulemaking petition *status quo ante*. Although it is possible there may in fact be another expression of interest, it is also likely there will be none, thereby advancing the Commission's statutory mandate under 307(b) of the Communications Act.¹

Respectfully submitted,

MOUNTAIN STATES RADIO, INC.

GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102-3807
(703) 761-5000

By 
A. Wray/Fitch III
Its Counsel

June 24, 2002

[K:\0524\Petition for Reconsideration.awf]

¹ In the event the Commission determines that MSR does not have the right to terminate the rulemaking to protect its present authorization from competing applications should another expression of interest be filed, MSR has no interest in pursuing the rulemaking.

CERTIFICATE OF SERVICE

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 24th day of June, 2002, by first-class, postage prepaid, U.S. Mail, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

Mr. John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Federal Communications Commission
445 12th Street, S.W., Room 3-A266
Washington, D.C. 20554


Millie Adams